

## **REMARKS**

In the Official Action mailed on 17 January 2006, the Examiner reviewed claims 1, 2, 4, 6-8, 10-13, 15, 17-19, 21-24, 26, 28-30, 32, and 33. Claims 12, 13, 15, 17-19, 21-24, 26, 28-30, 32 and 33 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claims 11, 22, and 33 were objected to as being in improper dependent form. Claims 1, 2, 4, 6-8, 10-13, 15, 17-19, 21-24, 26, 28-30, 32, and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brenner (USPN 6,859,926, hereinafter "Brenner"). In the advisory action of 31 March 2006, the Examiner rejected the amendments to the claims for overcoming the 35 U.S.C. §103(a) rejections citing Bean et al (USPN 4,853,541, hereinafter "Bean").

### **Rejections under 35 U.S.C. §101**

Claims 12, 13, 15, 17-19, 21-24, 26, 28-30, 32, and 33 were rejected because the claimed invention is directed to non-statutory subject matter.

Applicant has amended claim 12 to clarify that computer-readable storage medium includes only a tangible storage medium. Additionally, Applicant has amended claims 23-24, 26, 28-30, and 32 to clarify that the claimed apparatus is a computer system. These amendments find support on page 6, line 8 to page 7, line 9 of the instant application. Claim 33 has been canceled without prejudice.

### **Objections to the claims**

Claims 11, 22, and 33 were objected to as being in improper dependent form.

Applicant has canceled claims 11, 22, and 33 without prejudice.

**Rejections under 35 U.S.C. §103(a)**

Independent claims 1, 12, and 23 were rejected as being unpatentable over Brenner, in view of Bean. Applicant respectfully points out that Brenner teaches performing workload management by allocating class shares and tiers (see Brenner, col. 1, lines 36-58 and col5, line 61 to col. 6, line 3).

In contrast, the present invention assigns resources to resource pools (see FIG. 2 and page 7, line 1, to page 8, line 10 of the instant application). This is beneficial because assigning the actual resources to resource pools gives rise to more efficient resource utilization by ensuring that sufficient resources are available for a process, which leads to better system performance. There is nothing within Brenner or Bean, either separately or in concert, which suggests assigning resources to resource pools.

Note that the combined system of Brenner and Bean assigns class shares, which specify the importance of a task. However, there is no guarantee that the required resources will actually be available. The tasks must still contend for resources based on the number of shares assigned to the task. In contrast, assigns the actual resources to resource pools for exclusive use by assigned processes.

Accordingly, Applicant has amended independent claims 1, 12, and 23 to clarify that the present invention assigns resources to resource pools. These amendments find support in FIG. 2 and page 7, line 1, to page 8, line 10 of the instant application. Note that the added limitations to independent claims 1, 12, and 23 in the non-entered amendment have been removed.


Hence, Applicant respectfully submits that independent claims 1, 12, and 23 as presently amended are in condition for allowance. Applicant also submits that claims 2, 4, 6-8, and 10-11, which depend upon claim 1, claims 13, 15, 17-19, and 21-22, which depend upon claim 12, and claims 24, 26, 28-30, and 32-33, which depend upon claim 23, are for the same reasons in condition for allowance and for reasons of the unique combinations recited in such claims.

**CONCLUSION**

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

By



Edward J. Grundler  
Registration No. 47,615

Date: 5 April 2006

Edward J. Grundler  
PARK, VAUGHAN & FLEMING LLP  
2820 Fifth Street  
Davis, CA 95616-7759  
Tel: (530) 759-1663  
FAX: (530) 759-1665  
Email: edward@parklegal.com